

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

CHRISTIAN LOPEZ,

Defendant.

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Case No. 23-CR-44-JFH

SENTENCING MEMORANDUM

Defendant, Christian Lopez (Lopez) through undersigned counsel, Shena Burgess, requests this court to take into consideration all of the factors concerning the defendant before sentencing him in the future (no sentencing date has been set at this time). The defense is requesting this court sentence Mr. Lopez to probation.

Relationships among the codefendants:

Mr. Lopez was charged along with Eduardo Garcia, Eric Lopez, Eric Jesus Lopez, Savanna Lopez and Francisco Hernandez. Eduardo Garcia is Lopez's dad's cousin. Eric Lopez is Mr. Lopez's father. Eric Jesus Lopez and Savanna Lopez are his brother and sister in law. Mr. Hernandez is a cousin.

Charge and range of punishment:

Mr. Lopez was charged with False Statement During Purchase of a Firearm in violation of 18 U.S.C. § 924 (a)(1)(A) Mr. Lopez is facing a range of punishment of 0 to 5 years, up to a \$250,000.00 fine and supervised release of not more than three years. He took full responsibility for his actions in this case. Mr. Lopez's total offense level is 13 with a criminal offense level of 1 (zero points). His current guideline is 12 months to 18 months.

Procedural History:

A warrant was issued for Mr. Lopez and he was arrested on March 29, 2023. On March 30, 2024, He was arraigned before Magistrate Judge Gerald L. Jackson and counsel was appointed. He was released on the same day and began pretrial release. On July 19, 2023, Mr. Lopez appeared before Magistrate Judge Jackson for a change of plea. Mr. Lopez was allowed to remain out of custody since he had and still has complied with all pretrial services rules and conditions.

Factual History:

Mr. Lopez grew up with an appreciating of the outdoors including boating, fishing, and sports shooting. It was not uncommon for him to purchase and own guns. In the PSR, (page 10, paragraph 10) it is noted that some of his purchases were still in his home at the time of the arrest as he had owned it for over two years. With the assistance of my client's fiancé that particular gun was also turned over to the authorities. Mr. Lopez plead to the October 9, 2021 purchase of the 1 firearm of a Kel Tec Model PMR 30. The other purchases from Mr. Lopez were on November 23, 2021 and March 29, 2022. Mr. Lopez received \$100.00 for each purchase. He explained to officers that he needed money for rent so he helped to purchase the guns.

Personal History:

Mr. Lopez is twenty-seven years. During the time of these events, Mr. Lopez lived in Tulsa where the rest of the family lived in Tahlequah. Because of the events of the case, he has changed jobs and moved to Tahlequah with his fiancé and children so that he could work at American Casting and have the support of family. He is engaged to his fiancé KP who is also the mother of his children. They met in high school and have

been together since 2016. They have two children who are both under the age of 4. KP is a stay at home mother to their children and would not be able to maintain their apartment if Mr. Lopez were to be incarcerated. During the time period of the investigation and arrest, KP was pregnant with their second child.

Mr. Lopez is a hard worker and has maintained employment for his entire adult life. *U.S. v. Ruff* , 535 F.3d. 999 (9th Cir. 2008) *U.S. v. Jones* 158 F.3d 492 (10th Cir. 1998) For a hobby, he will find vehicles that are broken down and repair them and get them back on the road. This allows him to make additional money to support his growing family.

He comes from a family that always had food and shelter but not the finer things in life. He loves his parents and siblings and they are very close to each other. He was raised that family is everything and you always help each other out. He had intended before this arrest to marry his long time girlfriend/fiancé. This was put on hold during the pendency of this case.

Codefendants:

All parties have plead and none of have been sentenced at this time. Eric Lopez made one trip to the store and purchased 2 firearms. Eric Jesus Lopez made four trips to the store and purchased 28 firearms. Savannah Lopez made three trips to the store and purchased 22 firearms. Francisco Hernandez made six trips to the store and purchased 28 firearms. Eduardo Garcia is charged with receiving the firearms. The Washington Post has requested statistics on whether a person who answers a question wrong on the application for firearm is prosecuted. In 2019, 478 referrals were sent to federal prosecutors for lying on the form. Just 298 cases were filed. This is out of approximately

27 million background checks taken in a 12-month period. The ones that were filed were mostly strawman purchases.

Comparison to other cases:

Haley Leeanne Adkison was sentenced to 60 months probation to making a false statement during the purchase of a firearm. She had been convicted of a misdemeanor and marked that she had not. 5:22-cr-66-J-2 Western District of Oklahoma.

Glenville L. Albright was sentenced to 2 years probation for making false statements in connection to the attempted acquisition of a firearm. He marked that he was not a felon. 4:19-cr-52-JED Northern District of Oklahoma

Anthony Dale Brannon was charged with false statement in connection with the attempted acquisition of firearms and felon in possession of a firearm. He was sentenced to four years probation. 4:19-cr-50-CVE-1 Northern District of Oklahoma

Rufis Hicks was convicted of False statement in connection with the attempted acquisition of a firearm. He marked that he was not a convicted felon. He was sentenced to 4 years' probation. 4:19-cr-53-GKF-1 Northern District of Oklahoma

Latoya Lisa Dythe was convicted of conspiracy to make a false statement to a firearms dealer and false statement to a firearms dealer. She was sentenced to 5 years probation. Ms. Dythe was a Tulsa Police officer who purchased a pistol for her boyfriend. She knew her actions were illegal. Her boyfriend received time served and three years supervised release. 4:20-cr-315-jfh-2 Northern District of Oklahoma

Amy Carwile and Kevin Carwile were sentenced on August 3, 2022 to serve three months in federal prison and 1 year supervised release. They were engaged in the business of selling firearms and dating back to 2012, they made false statements and

failed to maintain proper records in connection with their firearm business. They sold 253 firearms through their off-the-book operations. Law enforcement seized 112 firearms that were to sold without completing the appropriate and required paperwork. 5:21-mj-486-SM-1 Western District of Oklahoma

Request for the Court to consider Variance and Departure

Mr. Lopez has plead guilty and has the stigma of a felony conviction. A conviction along with probation is sufficient punishment for an individual who was asked by a parent to do a family member a favor. The stigma of a felony conviction is permanent and pervasive. He is not likely to reoffend. The defendant request this court to not impose a period of incarceration. Ultimately, the question is what value would come from a period of incarceration. There is a cost involved, not only to society but to Mr. Lopez's family. His fiancé and children would not be able to afford their housing and would have to resort to going to live with family members.

The United States has 1 out of 5 prisoners in the world. *U.S. Incarcerated population from Prison Policy Initiative, Mass Incarceration: The Whole Pie 2019* A prison sentence is for individuals who need to be punished and the public needs to be protected from. Mr. Lopez does not fall in that category. 18 U.S.C. § 3553(a)(2)(C). This is not a strawman purchase as my client had no idea that his father's cousin had any criminal convictions in the past. He was asked to purchase the firearms the next time he went to store. Mr. Lopez has no criminal history. He has a family where he is the sole breadwinner. He supports his fiancé and two small children and is a good parent. *U.S. v. Pauley* 511 F.3d 468 (4th Cir. 2007) He is a full time employee and provides transportation to his two brothers so they may also be gainfully employed.

The court can consider the defendant's age and the fact that this is a first offense. *U.S. v. Paul* 561 F.3d 970 (9th Cir. 2009); *U.S. v. Autery*, 555 F.3d 864 (9th Cir. 2009) In the USSC report "Recidivism and the 'First Offender'", "The analysis [of empirical data on reoffending] delineates recidivism risk for offenders with minimal prior criminal history and shows that the risk is lowest for offenders with the least experience in the criminal justice system. Offenders with zero criminal history points have lower recidivism rates than offenders with one or more criminal history points. Even among offenders with zero criminal history points, offenders who have never been arrested have the lowest recidivism risk of all." Mr. Lopez is in the lowest recidivism category.

Conclusion:

Mr. Lopez was an individual who could lawfully purchase and possess firearms with no criminal history. He was induced to buy the firearm because he was asked to by a family member. He gain was a hundred dollar per firearm. Mr. Lopez is a law abiding citizen who made a poor choice. *U.S. v. Hadash* 408 F.3d 1080, 1084 (8th Cir. 2005) Mr. Lopez request this court to grant him a probationary sentence. Mr. Lopez is best served by a supervision and association with the U.S. Probation office. This will allow him to keep working full-time to support his family physically, financially and emotionally.

Respectfully Submitted,

SMILING, SMILING & BURGESS

s/Shena E. Burgess

By _____

SHENA E. BURGESS, OBA# 18663

Bradford Place, Suite 300
9175 South Yale Avenue
Tulsa, Oklahoma 74137
(918) 477-7500

(918) 477-7510 *facsimile*
sburgess@smilinglaw.com
slf@smilinglaw.com
Attorney for the defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2024, the foregoing instrument was electronically transmitted to the following ECF registrants:

Erin Cornell

s/Shena E. Burgess